



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

May 30, 2003

Mr. Kuruvilla Oommen
Assistant City Attorney
City of Houston
P.O. Box 1562
Austin, Texas 77251-1562

OR2003-3663

Dear Mr. Oommen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 181881.

The Houston Police Department (the "department") received a request for 20 offense reports. You state that the department will release some of the responsive information to the requestor. You claim, however, that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 261.201(a) of the Family Code provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

¹As you did not submit written arguments to this office stating the reasons why section 552.103 would allow the submitted information to be withheld, we find that you have waived that exception. See Gov't Code §§ 552.301, .302.

- (2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

We believe that Exhibit 4 consist of reports, records, and working papers used or developed in investigations made under chapter 261 of the Family Code. The report submitted as Exhibit 10 indicates on its face that it was forwarded to Child Protective Services ("CPS") for further investigation. Thus, we find that Exhibit 10 is also subject to chapter 261 of the Family Code. Because you have not cited any specific rule that the department has adopted with regard to the release of this type of information, we assume that no such regulation exists. Given that assumption, Exhibits 4 and 10 are confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute). Accordingly, the department must withhold Exhibits 4 and 10 in their entirety pursuant to section 552.101.²

Section 552.101 also encompasses section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Exhibit 2 involves juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, Exhibit 2 is confidential pursuant to section 58.007(c) of the Family Code. The department must withhold Exhibit 2 in its entirety under section 552.101 of the Government Code.

²As section 552.101 is dispositive, we need not address your argument under section 552.108 with respect to Exhibits 4 and 10.

In regard to Exhibits 5, 6, 7, and 8, you assert that the requested information is excepted from disclosure based on section 552.108(a)(1) of the Government Code. Section 552.108 of the Government Code states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). You inform us that Exhibits 5, 6, 7, and 8 pertain to pending cases. We therefore believe that the release of Exhibits 5, 6, 7, and 8 "would interfere with the detection, investigation, or prosecution of crime." *Id.*

In regard to Exhibits 3, 9, and 11, you assert that the requested information is excepted from disclosure based on section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Based on the information you provided, we understand you to assert that Exhibits 3, 9, and 11 pertain to cases that concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to Exhibits 3, 9, and 11.

However, section 552.108 does not except basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), which includes a detailed description of the offense. Thus, with the exception of the basic offense and arrest information, the department may withhold Exhibits 3, 5, 6, 7, 8, 9, and 11 from disclosure based on section 552.108. We note that the department has the discretion to release all or part of the remaining information in Exhibits 3, 5, 6, 7, 8, 9, and 11 that is not otherwise confidential by law. Gov't Code § 552.007.

To summarize: (1) the department must withhold Exhibits 4 and 10 from disclosure under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; (2) the department must withhold Exhibit 2 from disclosure under section 552.101 and section 58.007 of the Family Code; and (3) with the exception of the basic offense and arrest information, the department may withhold Exhibits 3, 5, 6, 7, 8, 9, and 11 from disclosure based on section 552.108.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Karen Rabon
Assistant Attorney General
Open Records Division

KR/sdk

Ref: ID# 181881

Enc: Submitted documents

c: Ms. Meredith Moran
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(w/o enclosures)